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REPORT

OF THE

JUDGE-ADVOCATE-GENERAL, U. S. A.,

TO THE

SECRETARY OF WAR


FOR

THE YEAR ENDING JUNE 30, 1903.



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REPORT

OF THE

JUDGE-ADVOCATE-GENERAL, U. S. ARMY.

WAR DEPARTMENT,
JUDGE-ADVOCATE-GENERAL'S OFFICE,
Washington, D. C., September 30, 1903.

Hon. ELIHU ROOT,
Secretary of War.

SIR: I have the honor to submit the annual report of the Judge-Advocate-General's Department for the year ending June 30, 1903.

The following data are compiled from the records received at this office of trials completed and published during the year covered by this report:

Commissioned officers tried by general court-martial:	
Convicted (sentences disapproved in 2 cases).....	27
Acquitted	12
Cadets tried by general court-martial (convicted).....	5
Enlisted men tried by general court-martial (including a few cases of civilians serving with the Army in the field and discharged enlisted men serving as general prisoners):	
Convicted (sentences disapproved in 51 cases).....	4, 828
Acquitted.....	403
	5, 275
Total trials by general court-martial	5, 275
(Being 36 less than in the preceding year.)	

The following table shows, approximately, the number of convictions of different offenses by general court-martial during the year:

Seventeenth Article of War:	
Losing accouterments.....	32
Losing arms	15
Losing clothing	36
Selling arms	5
Selling accouterments	4
Selling clothing	61
Spoiling horse, arms, accouterments, etc.....	1
Twentieth Article of War:	
Disrespect to commanding officer.....	57
Twenty-first Article of War:	
Disobeying superior officer.....	248
Offering violence to superior officer.....	3
Striking superior officer	13
Twenty-fourth Article of War:	
Disobeying noncommissioned officer quelling affray	12
Thirty-first Article of War:	
Lying out of camp or quarters.....	8
Thirty-second Article of War:	
Absent without leave.....	947

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Thirty-third Article of War:	
Failure to attend drill, roll call, etc.....	347
Thirty-fourth Article of War:	
Found 1 mile from camp without leave	5
Thirty-eighth Article of War:	
Drunkenness on duty.....	297
Thirty-ninth Article of War:	
Leaving post	90
Sleeping on post.....	187
Fortieth Article of War:	
Quitting guard	102
Forty-second Article of War:	
Leaving post in face of the enemy	3
Forty-seventh Article of War:	
Desertion	1,111
Fifty-first Article of War:	
Advising or persuading another soldier to desert.....	5
Fifty-eighth Article of War:	
Assault and battery with intent to commit rape	1
Larceny	7
Manslaughter	1
Murder.....	1
Robbery.....	1
Sixtieth Article of War:	
Embezzlement	5
Larceny	56
Making false and fraudulent vouchers	4
Purchasing Government property	1
Selling Government property	9
Wrongful disposition of property	6
Sixty-first Article of War:	
Conduct unbecoming an officer and a gentleman.....	1
Sixty-second Article of War:	
Absence without leave not chargeable under the Thirty-second Article of War.....	112
Abandoning equipments	7
Abandoning horse.....	1
Abusing noncommissioned officer.....	6
Abusing public animal.....	7
Adultery	1
Aiding and abetting desertion	1
Aiding and abetting larceny	7
Aiding and abetting robbery	7
Aiding prisoner to escape	5
Allowing prisoner to escape	52
Arson	9
Assault	60
Assault and battery	31
Assault upon commissioned officer.....	4
Assault upon noncommissioned officer in performance of duty.....	66
Assault upon sentry	7
Assault with dangerous or deadly weapon.....	24
Assault with intent to do bodily harm	43
Assault with intent to kill	27
Attempt at burglary	1
Attempt at larceny	5
Attempt at robbery.....	1
Attempt to commit sodomy.....	3
Attempt to commit suicide.....	2
Attempt to desert	2
Attempt to disarm sentinel.....	2
Attempt to escape from guardhouse or confinement.....	6
Breach of arrest.....	158
Breach of trust.....	4
Burglary	11

Sixty-second Article of War—Continued.

Careless handling of loaded firearms.....	19
Carrying concealed weapons	5
Committing a nuisance.....	17
Conduct causing arrest by civil authorities	4
Conspiracy	5
Creating an alarm in camp.....	2
Creating a disturbance.....	16
Damaging public property	4
Defrauding private parties	2
Destroying private property.....	14
Destroying public property	4
Discharging firearms without cause, endangering life.....	10
Disobedience of standing orders or regulations.....	207
Disobeying commissioned officer	99
Disobeying noncommissioned officer.....	360
Disarming sentinel	6
Disobeying sentinel	14
Disgraceful conduct; indecent, infamous, and unnatural practices.....	6
Disorderly conduct	101
Disposing of clothing.....	3
Disrespect to noncommissioned officer	97
Disrespect to sentinel.....	3
Disrespect to superior officer	62
Drunk and disorderly	269
Drunkenness.....	175
Drunkenness, etc., causing arrest by civil authorities	3
Drunkenness incapacitating for duty.....	21
Drunk on duty.....	46
Embezzlement	21
Escaping from guard or sentinel.....	6
Escaping from guardhouse	8
Evasion of duty	5
Failure to send correspondence through official channels.....	2
False accusation.....	1
False statement or report.....	101
False swearing	5
Falsifying accounts	1
Fighting.....	4
Firing on civilians without cause	3
Forcing an entrance into private dwelling.....	15
Forgery	8
Fraud	25
Fraudulent enlistment.....	124
Gambling.....	5
Giving liquor to prisoners.....	1
Harrassing, annoying, and looting natives and citizens.....	10
Having possession of intoxicating liquor	10
Impersonating an officer, sentinel, or patrol.....	1
Indecent conduct.....	5
Indecent exposure of person	2
Insubordinate conduct toward commissioned officer	52
Insubordinate conduct toward noncommissioned officer.....	102
Interfering with noncommissioned officer in performance of his duty	5
Interfering with sentinel.....	4
Introducing liquor into camp, quarters, etc.....	41
Larceny	363
Leaving post	11
Leaving post and abandoning rifle.....	3
Leaving ranks without permission.....	3
Leaving hospital without permission.....	6
Losing arms, accouterments, etc., by allowing them to be captured.....	2
Making indecent proposals.....	2
Malingering.....	7
Manslaughter	6
Misappropriating and wrongfully disposing of public property.....	10
Misappropriating exchange funds.....	1

Sixty-second Article of War—Continued.

Mutinous conduct	3
Neglect of duty	172
Obtaining money or property under false pretenses	11
Out of quarters after taps	12
Pawning borrowed property	2
Pawning Government property.....	5
Perjury.....	7
Permitting member of guard or prisoner to obtain intoxicating liquor....	23
Rape	3
Receiving and disposing of stolen property.....	7
Refusing to perform duty	28
Refusing to submit to surgical operation	5
Removing rifle or pistol without authority	6
Resisting arrest	63
Resisting arrest by civil authority	4
Resisting being disarmed	1
Resisting noncommissioned officer.....	22
Resisting sentinel	4
Robbery.....	25
Selling company property.....	1
Selling, losing, or wasting Government property.....	27
Selling or pawning stolen property	8
Sleeping while on duty	10
Sitting down while on post.....	14
Sodomy	1
Striking noncommissioned officer.....	47
Striking sentinel	4
Threatening civilian.....	11
Threatening noncommissioned officer.....	42
Threatening to kill	31
Threatening sentinel	3
Threatening soldier	4
Threatening superior officer.....	4
Threatening to do bodily harm.....	17
Trading in stolen goods.....	3
Using insubordinate language	78
Using insulting and abusive language	152
Using profane and indecent language	116
Using threatening and abusive language	97
Uttering forged paper	2
Wasting food	2
Disorder, etc., charged as "conduct to the prejudice of good order and military discipline" (not included under previous heads)	215

Five officers and 3 cadets were dismissed by sentence; and in 3 cases of officers sentences of dismissal were commuted to loss of files.

The number of men sentenced to dishonorable discharge was 2,700.

The following table shows, approximately, the convictions of desertion, classified according to the limits of punishment prescribed in the order of the President published in General Orders, No. 42, Headquarters of the Army, 1901:

	Num-ber.	Limit of con-finement.
Surrendered:		<i>Months.</i>
After an absence of not more than thirty days	112	12
After an absence of more than thirty days	168	18
Apprehended:		
In service not more than six months at time of desertion.....	432	18
In service more than six months	399	30
Total number of convictions.....	1,111
Average limit of confinement.....		21.70+

In connection with this table it is to be observed that the limits of punishment are prescribed for "time of peace" only. The average period of confinement adjudged was considerably less than the average limit for the offenses under the President's order.

The records of military commissions received at this office during the year covered by this report show that 72 persons were tried, being 648 less than in the preceding year. Of this number 62 were convicted and 10 were acquitted. In 20 cases the sentences were disapproved. The large decrease in the number of trials by military commission is due to the fact that during the year a condition of peace was proclaimed as existing in the Philippine Islands. The following table shows, approximately, the offenses:

Aiding and abetting public enemy.....	3
Assault and battery	2
Assault and battery with intent to kill.....	1
Attempt to murder.....	1
Conspiracy against the United States	1
Corruption in office	1
Dealing in slaves	1
Deserting from the American Army and entering the service of the enemy.....	1
Engaging in insurrection against the United States.....	1
Kidnaping.....	10
Manslaughter.....	3
Murder.....	17
Rape.....	1
Robbery.....	6
Violation of the laws and usages of war.....	2
Violating oath of allegiance	3

Death sentences were imposed by military commissions in about 14 cases (nearly all natives of the Philippine Islands), on conviction of the more serious crimes named in the list, and the sentences were executed in about 10 cases. In the remaining cases the sentences were commuted to imprisonment for a term of years.

Upon the recommendation of the Department the Eighty-third Article of War, which defines the jurisdiction of the several inferior courts in respect to their power to punish, was amended by the act of March 2, 1901 (31 Stats., 951), in such a way as to permit those tribunals to impose sentences of three months' forfeiture of pay or three months' confinement at hard labor, or both, at the discretion of the court. The operation of this enactment has been to simplify the administration of military justice and to make it unnecessary to refer a considerable number of cases to general courts-martial for trial, which, prior to the adoption of the amendment, were exclusively triable by such tribunals. In this respect it has continued to justify the expectations which were entertained as to its necessity and propriety when the matter was presented to Congress.

Attention is invited to the extracts from reports of judge-advocate of departments appended to this report.

In closing this report it gives me great pleasure to recognize the efficient assistance which I have received from the officers of the Department in their different fields of endeavor, and from the employees, both permanent and temporary, who are attached to the Judge-Advocate-General's Office. Their labors have been zealous and untiring, and the services rendered by them have been entirely satisfactory.

Very respectfully,

GEO. B. DAVIS,
Judge-Advocate-General.

APPENDICES.

Extract from annual report of Col. Edward Hunter, judge-advocate, U. S. Army, judge-advocate Department of the East, dated July 11, 1903.

All soldiers discharged ignominiously and sentenced to imprisonment are now relegated to penitentiaries, or to army posts where exigencies of space, want of occupation, and difficulty of guarding preclude the attainment of the true end of punishment. A special military code and system of discipline should be devised for their moral improvement, as well for the deterring of others from the commission of crime. The men ignominiously discharged from the Army, if there is any way to avoid it, should not be permitted to become recruits to the criminal classes and to entail crime on the community. It is an advantage to the State to have its military prisoners, who are, in many instances, very young men, made self-respecting and taught some useful trade. This could be done in a military prison or reformatory. This expedient would not cost much, while a great advantage should redound to the people and to a class of men who, it would be remembered, are transgressors of a law much more severe and exacting than that of the civilian.

Extract from annual report of Lieut. Col. John A. Hull, judge-advocate, U. S. Army, judge-advocate Department of the Missouri, dated July 20, 1903.

The important change in the administration of military justice that is needed in this department is reform in the care and custody of military prisoners and the return from the post-guardhouse system to the method involved in that of a military prison, and this change can not be too strongly urged. The prison reports for the month of June, 1903, show that there were 173 general prisoners and 129 garrison prisoners confined on June 30, and this number can not be properly accommodated, as the capacity of all post guardhouses in this department when completely occupied is only 171 general prisoners and 128 garrison prisoners.

There are no means available at the posts to keep this number of prisoners at work, while the overcrowding results in improper sanitation. The contact of this criminal class with soldiers in good standing is highly prejudicial to the interests of discipline and results only in harm to the soldiers.

The number of escapes that have taken place—viz, general prisoners, 41; prisoners awaiting trial or result of trial under serious charges, 20, making a total of 61—shows that the present facilities for safeguarding have been overtaxed.

Extract from annual report of Maj. George M. Dunn, judge-advocate, U. S. Army, judge-advocate Department of Colorado, dated July 10, 1903.

Touching the administration of military justice in this department, the two most serious matters are: First, the large number of desertions, and, second, the utter inadequacy of the post guardhouses for the confinement of general and garrison prisoners.

Out of a total of 190 convictions by general courts-martial 66 were for desertion. For the most part those so offending are not of a vicious class, but rather a careless, worthless lot of young men who enter upon a three-year enlistment with no appreciation of the serious nature of the contract. If it were possible to return to the five-year term of enlistment, by so much would more consideration be given the subject before men entered the service.

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The chief surgeon of the department by indorsement says on this subject: "Authorities on military hygiene give 85 feet floor space and 600 feet air space as the smallest amount that should be allowed to soldiers in barracks. A guardhouse which is liable to obtain less access of air by the opening of doors and windows than a barrack during the night should on this account be allowed not only as much but more space per man. An examination of the within reports indicates that the guardhouses at the larger posts in this department are much overcrowded, but that the smaller posts are much more favorably situated in this respect."

It is only at the larger posts that the guardhouses are secure enough for the confinement of general or long-term prisoners, so that transfers can not be made to the smaller posts.

The following extract from the report of annual inspection at Fort Douglas, Utah, May 9-14, 1903, by Maj. James A. Irons, inspector-general of the Department, shows the condition at that post: "There are 21 general prisoners and 8 casuals awaiting trial or sentence, besides the ordinary garrison prisoners, a total of 34. All are very much crowded in two rooms, which are too small, badly ventilated, and not large enough to admit of bunks. One of these rooms has in addition to be used as a mess room. The state of this guardhouse, owing to this condition, is scandalous * * * The commanding officer evidently attempts to alleviate the situation as much as possible, but the guardhouse is crowded beyond its limits. Conditions are seemingly getting worse, and I invite attention to my former recommendation of establishing a military prison similar to one formerly at Fort Leavenworth, Kans. A number of prisoners desired me to have them changed to guardhouses at other posts on account of their crowded condition."

The result most to be feared of such overcrowding of prisoners is that the few vicious characters may debauch young men, and we must expect to find prison vices existing. The fact that regular employment can not be given prisoners, that useful trades can not be taught them, means that at the end of their terms of confinement we turn them out worse men than they were when we imprisoned them.

Extract from annual report of Capt. C. D. Roberts, acting judge-advocate, Department of Texas, dated July 16, 1903.

The question of properly guarding and working general prisoners, upon which I enlarged in my last report, continues to be a serious problem. The present method of confinement of these prisoners in post guardhouses is very unsatisfactory, and a central military prison, or several of them, should be established with a guard of general service men similar to the old prison guard at Fort Leavenworth. Under present conditions there is no chance of reform offered to a general prisoner, and at the expiration of his sentence he is turned out to join the large army of professional tramps and vagabonds. It is thought that a central prison properly conducted under modern methods could largely support itself by utilizing the prison labor on Government work, and the prisoners could be kept apart, properly disciplined, and taught a trade.

The large number of trials in this department in the last two years is due largely to the great number of recruits in the ranks and the number of new and inexperienced officers. The three-year enlistment is undoubtedly bad for discipline. The general mess system is in operation at Forts Bliss and Sam Houston, and to this system is undoubtedly due some of the trials at those posts, since under it there is always more or less discontent among the troops with the food furnished and the cooking.

It is hardly necessary to state that the prohibition of the sale of beer in the post exchange has resulted in a great increase in the number of saloons, generally of the lowest class, in the vicinity of all posts, and consequent injury to discipline. The conditions resultant on the practical abolition of the canteen feature of the exchange have been so often and so graphically described that it is needless to go further into the matter here than to say that the temptations to dissipation held out to soldiers immediately outside the reservation line of every post in this department are about as great as it is possible to conceive.

In order to secure a more speedy trial of apprehended deserters from organizations which have left for foreign service it is suggested that such organizations, just before leaving the United States, be required to send the descriptive lists of all absentees without leave to the Adjutant-General's Office, through the headquarters of the department in which they were serving. Charges and statement of service could then be prepared from these descriptive lists on apprehension of the offenders and the trials could be promptly conducted, discharges granted, etc., without the long delay of mail communication with the deserter's organization.

In order to prevent deserters who have succeeded in avoiding apprehension for a year or more from obtaining any advantage over those less fortunate, it is recommended that in cases of trials for desertion previous convictions had within one year of date of desertion be made admissible for consideration instead of those had within one year of arraignment.

There is great necessity for a law making the wearing of the army uniform by unauthorized persons a penal offense. The uniform of a discharged soldier who does not reenlist should be repurchased by the Government, at a proper appraised valuation. It is not conducive to pride in the uniform to see it worn by dive keepers and tramps, but under present conditions that can not be prevented outside of military reservations.

Efforts have been made here to secure the conviction, before the United States district court, under section 5438, Revised Statutes, of civilians who have bought soldiers' clothing; but convictions have never been obtained, the court holding that clothing issued and charged to the soldier becomes his property. The court quoted, in the decision in one of these cases, as an expression of the opinion of the executive branch, and as thus worthy of due weight, section 2274, Digest Opinions Judge-Advocate-General, 1901. It is very desirable that legislation be obtained declaring that clothing issued to a soldier remains the property of the United States and that its purchase is a penal offense under section 5438, Revised Statutes.

In addition a law should be enacted prohibiting the adoption of the United States army uniform in whole or in part by civic or semimilitary organizations. On account of the recent changes in the army uniform the present is a peculiarly good time for the enactment of such a law.

The important duties of judge-advocate of general courts-martial have been much better performed during the past year than in the preceding one, showing the value of the systematic instruction now being given to officers.

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